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No. 90-1119

In The
Supreme Court of the United States
October Term, 1990

ROLAND A. LEBLANC,

Petitioner,

v.

RAYTHEON COMPANY, INC., and
UNITED STATES OF AMERICA,

Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The First Circuit

BRIEF OF *AMICUS CURIAE* AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS

AIA is the national trade association representing the interests of manufacturers of aerospace-related equipment such as military aircraft, missiles, spacecraft, computers, and related components. Virtually all of AIA's member companies provide goods and services under contract to the United States government. AIA's members are increasingly the targets of *qui tam* suits under the False Claims Act.

SUMMARY OF ARGUMENT

This case is not worthy of certiorari. There is no conflict among the circuits concerning government employee *qui tam* suits. This is the only such suit ever decided by a court of appeals. The decision below does not establish any wide-ranging new precedent and is expressly limited to its peculiar facts.

Furthermore, its result is correct. Suits brought under the False Claims Act by present or former federal government employees based on knowledge they acquired in the course of their government service are jurisdictionally barred by 31 U.S.C. §3730(e)(4). That provision denies jurisdiction over *qui tam* suits "based upon the public disclosure of . . . transactions in a . . . administrative . . . audit or investigation . . . unless the person bringing the action is an original source of the information." An "original source" is "an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided it to the Government . . . ." In this case, the information upon which LeBlanc based his suit was information that was disclosed to him in his capacity as a public official performing a government audit or investigation. It was his job to uncover evidence of fraud on behalf of the Government. Under these circumstances, the First Circuit correctly concluded that his suit was based upon a "public disclosure," that he was not an "original source" and that the district court's dismissal of the suit for lack of subject matter jurisdiction was correct.

ARGUMENT

I. THERE IS NO CONFLICT AMONG THE CIRCUITS CONCERNING THE ISSUES IN THIS CASE.

The Court of Appeals' decision raises a narrow issue of statutory construction and does not conflict with any decision of this Court or another court of appeals. Petitioner's attempt to find a dispute in the circuits depends on an erroneous reading of the First Circuit's opinion.

A. *The Jurisdictional Bar of 31 U.S.C. §3730(e)(4)*

Subject to four specified exceptions in §3730(e), the Act extends a general grant of subject matter jurisdiction to the federal courts to hear *qui tam* cases brought by "a person" to enforce the substantive provisions of the Act. 31 U.S.C. 3730(b)(1). The sole issue in this case is whether the exception to jurisdiction under the False Claims Act which is set out in 31 U.S.C. §3730(e)(4) bars LeBlanc from bringing this action.[1] The resolution of this issue turns on the interpretation of the statutory phrases "public disclosure" and "original source."

Section 3730(e)(4) is a *jurisdictional* bar. If LeBlanc's action falls within it, the courts below were correct to dismiss his suit for lack of subject matter jurisdiction. LeBlanc concedes this, Petition, p. 14, but argues that either his case falls outside the bar of §3730(e)(4)(A) entirely because there was no relevant public disclosure of the information on which he based his suit, or that he comes within the "original source" exception to that bar.

Section 3730(e)(4) creates a two-part test of jurisdiction. The first question, as here relevant, is whether the plaintiff-relator's suit is based on public disclosure of a government investigation, report, hearing or audit. If not, then the court has jurisdiction. But

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[1] The first three exceptions, §3730(e)(1) - (3), do not apply to this action.

if so, then the court does not have jurisdiction unless the relator satisfies the second part of the test: that is, he is an "original source" of the information. He is an "original source" only if (a) he has "direct and independent" knowledge of the information and (b) he "voluntarily provided" the information to the government before filing his suit.

B. *LeBlanc Misreads the Circuit Court's Decision.*

LeBlanc agrees with this analysis of the Act, Petition pp. 13-15, as did the District Court, Mem. Decision A19-A21. The basis for LeBlanc's petition is his claim that the First Circuit's opinion rejected this analysis through its misunderstanding of the two-part test. He reads the decision below as holding that it is a prerequisite to bringing all *qui tam* actions that the plaintiff be an "original source," i.e., that he must be an original source even if there has been no public disclosure. Petition 6, 11, 13.

This reading mischaracterizes the First Circuit's ruling. Appropriately read, it is consistent with the structure of the Act and reaches the correct result in this case. The First Circuit did not hold, as LeBlanc suggests, that only persons who are "original sources" can bring *qui tam* suits, even if the suit is not based upon a public disclosure. Rather, the First Circuit found that there was a public disclosure, but it made this finding on grounds narrower than those cited by the District Court. Specifically, the First Circuit found it critical that LeBlanc's information came to him as a public official in the course of performing his public duties as a government investigator. The First Circuit disagreed with the District Court's reasoning, which the Circuit Court interpreted as viewing public officials as individuals having dual natures. The First Circuit did not disagree with the District Court's conclusion that LeBlanc's suit was based upon a public disclosure or with the District Court's view of the essential structure of §3730(e)(4). LeBlanc's suggestion that the First Circuit has grossly misperceived the elementary format of the statutory section arises from a fundamental misreading of the opinion.

C. *Properly Interpreted, the Decision Below is Not Inconsistent with Decisions in Other Circuits.*

Given the proper interpretation of the First Circuit's decision, it does not conflict with the two Circuit Court decisions that LeBlanc cites as contradicting it.[2] Neither involved a relator who was a government employee; consequently, neither has anything to say about the narrow issue involved here. Like the decision below, both analyzed the issue of public disclosure before reaching the issue of whether the relator was an "original source."

The other two decisions cited by LeBlanc as support for his claim that the lower federal courts are "divided and confused" on the issue of when federal employees can bring *qui tam* suits are both recent district court decisions.[3] No court of appeals other than the First has yet had occasion to look at this question. However, appeals are pending in at least one other circuit.[4] It would be appropriate to allow the courts of appeal the opportunity to consider this issue and hopefully work out a consensus.

This case is unlikely to ever conflict with other decisions because the Court of Appeals carefully stated that "we limit our holding to the facts." A8.

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[2] *Houck on Behalf of United States v. Folding Carton Admin. Comm.*, 881 F.2d 494, 504 (7th Cir. 1989), *cert den. sub. nom. Certified Plaintiff Class in MDL-250 v. Folding Carton Reserve Fund*, ___ U.S. ___, 110 S.Ct. 1471, *cert. den. sub. nom. Re Will*, ___ U.S. ___, 110 S.Ct. 1514 (1990); *U.S. ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13, 16 (2d Cir. 1990).

[3] *Erickson ex rel. U.S. v. American Institute of Biological Sciences*, 716 F.Supp. 908 (E.D. Va. 1989) (federal employee can bring *qui tam* action in some situations, but suit dismissed on other grounds), *U.S. v. CAC-Ramsay, Inc.*, 744 F.Supp. 1158 (S.D. Fla. 1990), *app. pending* 11th Cir. No. 90-5848.

[4] *U.S. v. Stern*, No. 90-3556, (11th Cir.); *U.S. v. CAC-Ramsay, Inc.* No. 90-5848 (11th Cir.); *U.S. ex rel. Williams v. NEC*, No. 89-3973 (11th Cir.); *U.S. v. Nsidibe Ikpe*, No. 90-5546 (11th Cir.); *U.S. v. Martin Roche*, No. 90-5545 (11th Cir.).

D. *Procedural Problems Make This Case Unworthy of Certiorari.*

The record in this case was never developed. The defendant Raytheon was never served and has played no part in any of the proceedings. As between LeBlanc and the United States Government, there has been no adjudication of the Government's reservation of rights. Accordingly, as both of the lower courts have observed, it is unknown whether LeBlanc intends to proceed with this case, or how far he may proceed with it, even if the District Court is held to have subject matter jurisdiction. If LeBlanc proceeded to a conclusion and obtained a recovery, it is unknown whether the Government would contest his claimed share of it. All of these considerations make certiorari inappropriate.

II. CONCLUSION

For the reasons set forth above, AIA respectfully suggests that the petition for a writ of certiorari should be denied.

DATED: Boston, Massachusetts: February 21, 1991.

Respectfully submitted,
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